UNITED STATE OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Region 09

SHAMROCK CARTAGE, INC.	:	
Respondent,	:	**Case No. 09-CA-219396**
and	:	
INT'L BROOTHERHOOD OF TEAMSTERS LOCAL UNION 413	:	
Charging Party.	:	

EMPLOYER'S POSITION STATEMENT

SHAMROCK CARTAGE, INC., ("Shamrock") submits the following Position Statement in the above captioned case[1].

The Employer asks for the Board at the conclusion of evidence gathering to dismiss the charges for lack of credible evidence demonstrating a violation of the National Labor Relations Act ("the Act").

The Charging Party alleges that on or about April 9, 2018, Shamrock suspended Shane Smith ("Smith") and on or about April 13, 2018, it terminated Smith because he engaged in protected concerted and union activities in violation of Section 8(a)(3).

---

[1] The information set forth herein is based upon the undersigned's understanding and investigation of the facts at the time of submission. By submitting the instant position statement, the Employer in no way waives its right to present new or additional facts or arguments based if this matter proceeds to a hearing. Further, this position statement does not constitute an affidavit, and it is not intended to be used as an affidavit. The Employer provides this document with the understanding that its contents and attachments will not be disclosed to the Union.

The Charging Party next alleges that Shamrock Cartage violated Section 8(a)(5) of the Act without providing it with notice and an opportunity to bargain about its decision to suspend and terminate Smith before doing so.

The Charging Party, through an Amended Charge, also alleges "that Shamrock violated Section 8(a)(1) when about April 9, 2018, manager Brian Williamson threatened an employee with reprisals, i.e. assigning employees with work and behavioral problems to this employee's shift which would result in more onerous working conditions, because of the Union's position on progressive discipline at the bargaining table."

The Board has further asked Shamrock to respond by affidavit and document production to the charges.

STATEMENT OF CASE

I. Facts

Shamrock was founded in 1995, by Matt Harper ("Mr. Harper") and Dan O'Brien (Mr. O'Brien"). They were the only two drivers at that time.

Shamrock was started to provide timely, efficient, and cost-effective facilitation and movement of products between shipping facilities. Mr. O'Brien and Mr. Harper began the company with the desire to not only provide high-quality service in the field of shipment, but also for the opportunity to educate others in the profession and build and grow a company with the highest level of integrity.

Shamrock provides services to shipping centers to facilitate the movements and spotting of containers, and thus facilitate the needs of the particular facilities in

processing and sorting of material and products for shipment. Shamrock, where contracted, is responsible for the timely movements of inventory between depots.

During or around April 2017, Shamrock was contracted to provide the above described services at the DHL facility ("Kraft") located at 2842 Spiegel Drive, Groveport, Ohio and at the Ryder Logistics facility ("Ryder") located at 3880 Groveport Road, Obetz, Ohio.

Smith was hired on April 10th, 2017 as a yard driver working primarily at Kraft. Smith was previously terminated on August 8th, 2017.

Smith was reinstated after charging the Employer with Unfair Labor Practices Charges he alleged caused his previous termination.

On or about April 9, 2018 Smith contacted, without authorization from the Employer and fully outside his job duties, PINC SOLUTIONS ("PINC"). PINC is a provider of advanced yard management, finished vehicles logistics solutions, and inventory robotics solutions to the world's leading brands. PINC also provides scalable software, hardware, and services that intend to enable companies to move goods through the supply chain faster, cost-effectively, consistently, and more efficiently.

Smith personally contacted PINC (using the phone number located within the truck numbered 263 and 264, contrary to his claims of being asked to contact PINC by a supervisor) (Please see Exhibits 1 and 2) in the attempt to request information in regard to a purchase order from PINC in relation to an issue with the current system within a Shamrock truck. This resulted in Mr. Jerry Craft ("Craft"), the Supply Chain Manager at PINC, contacting Mr. Brian Williamson ("Williamson"), Shamrock Site Supervisor, by

email stating that Smith contacted him asking who was responsible for a purchase order. (Exhibit 3).

Smith has never been authorized to contact any of Shamrock or DHL logistics suppliers. However, his contacting of PINC resulted in a purchase order of $3,279.93, which was delivered to Williamson. (Exhibit 4).

As shown on Exhibit 3, Smith has evidently contacted PINC before, without authorization, and only when told by Craft did Shamrock become aware of Smith's inappropriate and repeated actions. Once Smith's actions were discovered, Williamson requested Smith to come to the site. Mr. Michael Holmes ("Holmes"), Labor Relations Specialist with Shamrock's representative Burdzinski and Partners, was on the phone with Williamson when Smith met with Williamson.

Holmes requested to remain on the phone with the phone on "speaker mode" to be a witness to the meeting. Smith has demonstrated a penchant for untruthfulness during the parties' collective bargaining sessions. Based on this history, Holmes believed it wise that Williamson not speak to Smith alone, but would be better served by having a witness present.

When Smith arrived, Williamson told him that he needed to get his things and leave the property, pending investigation and termination. When Smith asked as to the reasons why, Smith stated "is this about earlier? Who is telling you to do this? I have a right to know!" He continued as he was leaving, "you ratted me out! I will be back with pay and when I am back you're done!" (Exhibit 5 and 6).

Unfortunately, Smith is known to have a short temper with other workers and has also misled other employees in the past. (Exhibit 5, 7 and 8). His actions even caused an employee to quit their job. (Exhibit 7). Further, this is the second time Shamrock is aware of Smith threatening another employee or supervisor. (Exhibit 8). Both times the threats were made, they were in reference to what Smith would do once he comes "back to work."

Holmes attempted to call and email the union before the request to remove Smith from the property (Exhibit 9). Unfortunately, the Union Business Agent Ted Beardsley ("Beardsley") was not available when Holmes attempted to contact him. Holmes also called the Union's Attorney, Mr. Clemet Tsao ("Tsao"), to make sure the Union was aware of the situation as he could not get ahold of Beardsley.

On April 11, 2018 both parties met at the Teamster Local Union 413 offices to bargain over Smith's discipline. Unfortunately, as the notes showcase, Shane not only has claimed he had permission to call PINC, but also that he would not have been able to make the phone call without being told the number to call by Williamson. As shown on Exhibit 1 and 2, this is simply false. Further, Shane made clear that after he was asked to leave the site, he called PINC again, knowing that to be the reason he was asked to leave in the first place. Finally, Beardsley denied that Shane ever called in an order before, contrary to Exhibits 3 and 10.

On April 12, 2018 due to the determination by the Employer that Smith was acting dishonestly in regard to contacting suppliers and provided no evidence to the contrary, the Shamrock decided to terminate Smith's employment. (Exhibit 11 and 12).

During the three days Smith was suspended and under investigation, he continued to be paid. Smith never lost any benefits, salary, or standing within the company during the time of the investigation.

II. Employers Position

Shamrock has not violated any laws to which it is subject, including the Act and specifically the sections of the Act alleged by the Charging Party. The above allegations are meritless, and not supported by anything other than false accusations from the Charging Party without any corroborating credible evidence.

Shamrock categorically denies all allegations that it coerced, restrained, or infringed in any way upon the rights guaranteed its employees under any Section of the Act including, but not limited to union activity, union support, or other protected concerted activities. Shamrock has taken no adverse employment actions against any employee because of the employee's participation in or support of other's participation in any activity protected under the Act.

The allegations otherwise are false and misleading with the intent to harm the Employer's reputation and economic success, while utilizing the Board as a tool to accomplish that goal.

The actions of Smith are in no way related to protected concerted and union activities. The Employer believes this charge is a vehicle to attack Shamrock in retaliation for Shamrock's justifiable and proper termination of Smith.

III. Law

A. No evidence exists establishing that the Employer violated any employee's Section 7 Rights

The charging party provides no evidence that meets the Board's long-established *Wright Line* standard for 8(a)(1) and 8(a)(3) violations. The so-called *Wright Line* analysis is applied when an Employer articulates a facially legitimate reason for its termination decision, but that motive is disputed. See *Wright Line*, 251 NLRB 1083 (1980).

The initial *Wright Line* burden is on the Board's general counsel to establish that the employee's protected activity "was a motivating factor" in his or her eventual termination. *NLRB v. MDI Commer. Servs.*, 175 F.3d 621, 625 (8th Cir. 1999). The elements of this prima facie case are "(1) the employee was engaged in protected activity; (2) . . . the employer knew of the employee's protected activity; and (3) . . . the employer acted as it did on the basis of anti-union animus." *NLRB v. Rockline Indus.*, 412 F.3d 962, 966 (8th Cir. 2005) (quoting *FiveCAP, Inc. v. NLRB*, 294 F.3d 768, 777 (6th Cir. 2002)) (ellipses original).

If the general counsel meets this burden, "the conduct is unlawful unless the employer proves it would have taken the same action absent the protected activity." MDI, 175 F.3d at 625. The existence of a nondiscriminatory rationale for the termination is not enough to establish this affirmative defense. *Hicks Oils & Hicksgas*, 293 NLRB 84, 85 (1989). In order to satisfy the employer's burden, the rationale cannot only be a potential or partial reason for the termination, it must be "the justification." *Rockline*, 412 F.3d at 970 (emphasis in original).

While normally an employer is free to discharge an at-will employee for any or no reason, the National Labor Relations Act, 29 U.S.C. § 151 et seq., provides protections to workers who seek to form a union or otherwise engage in concerted labor activities. In appraising a challenge to an employee's termination allegedly caused by protected labor activity, the question is whether the employee's termination was motivated by the protected activity. *Concepts & Designs v. NLRB*, 101 F.3d 1243, 1245 (8th Cir. 1996). Motivation "is a question of fact that may be inferred from both direct and circumstantial evidence." Id.

The existence of a nondiscriminatory rationale for the termination is not enough to establish this affirmative defense. In order to satisfy the employer's burden, the rationale cannot only be a potential or partial reason for the termination, it must be the justification. Here, as the facts are presented, the termination was absolutely justified, and not remotely motivated by protected activity.

No evidence exists that the termination of the Smith's employment was precipitated by the protected or concerted activity. The Charging Party cannot provide any credible evidence establishing the elements of Section 8(a)(3) violation. An action is concerted when it is engaged in with or on the authority of or for the benefit of other employees, and not solely by and on behalf of the employee himself, as in the instant case.

Further, an employer can terminate an employee for rude or abusive behavior even if that behavior occurs during the protected concerted action, *Carleton College v. NLRB*, 230 F.3d 1075, 1080-81 (8th Cir. 2000).

The Supreme Court has declined to extend this safe harbor to circumstances where the stated motivation was "an alleged act of misconduct in the course of [protected] activity." *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21, 23, 85 S. Ct. 171, 13 L. Ed. 2d 1 (1964). In such circumstances, so long as the employee was not "in fact guilty of that misconduct," the employer's honest belief to the contrary does not exempt it from liability. Id. However, the Employee, in this case, is in fact guilty of that misconduct.

Unfortunately, when presented with meritless allegations, it is not simply the case of showcasing "proof" that the allegations are utterly meritless. There is no Employer documentation stating "Smith was dishonest today," or "Smith has lied to other employees again." The Board "is permitted to draw reasonable inferences, and to choose between fairly conflicting views of the evidence[,] [i]t cannot rely on suspicion, surmise, implications, or plainly incredible evidence." *Concepts & Designs, Inc. v. NLRB*, 101 F.3d 1243, 1245 (8th Cir.1996). The Charging Party only provides suspicion, surmise, implications, or plainly incredible evidence in the instant case.

Shamrock relies on its own history with Smith, standards of business practice, its personal determination of how to run a successful business, and the fact that Smith is known to have previously misled other employees. When confronted with false allegations, the Board has the ability to determine the answers to questions of fact through both direct and circumstantial evidence. Smith has no credibility and the Board should, absent independent corroborating evidence, discount his false allegations.

Smith was terminated because of his inappropriate actions, and nothing more.

B. Smith's actions are <u>not</u> Protected Concerted Activity(s) and are outside the protection of the Act.

Under the Act, employee concerted activity falls into three categories:

(1) Those protected by Section 7,

(2) Those protected by section 8, and

(3) Those that are neither protected nor prohibited.

Protected activities are those that are pursued by employees in a peaceful manner in the exercise of their Section 7 rights. Unprotected activities are those that are unlawful, violent, in breach of contract or indefensibly injurious to employer interests. *NLRB v. Local Union No. 1229, IBEW*, 346 U.S. 464, 74 S. Ct. 172 (1953).

Additional limitations on the protection of Section 7 spring inevitably from the necessity to balance those protections against the legitimate interest of employers. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 65 S. Ct. 982 (1945). To determine whether activity by a single employee, as in the instant case, is concerted the Board will look to the purpose and effect of the employee's actions. *NLRB v. Caval Tool Div., Chromalloy Gas Turbine Corp.*, 262 F.3d 184 (2d Cir. 2001).

The phrase "concerted activity" clearly "embraces the activities of employees who have joined together in order to achieve common goals." City Disposal Systems, Inc., 465 U.S. at 830, 104 S.Ct. 1505. "Although one could interpret the phrase, 'to engage in concerted activities,' to refer to a situation in which two or more employees are working together at the same time and the same place toward a common goal, the language of Section 7 does not confine itself to such a narrow meaning." Id. at 831, 104 S.Ct. 1505.

Rather, that phrase also includes the actions of a single employee, acting alone, who intends to initiate group activity. Id.

This is so because, "[t]o protect concerted activities in full bloom, protection must necessarily be extended to intended, contemplated or even referred to group action, lest employer retaliation destroy the bud of employee initiative aimed at bettering terms of employment and working conditions." *Hugh H. Wilson Corp. v. NLRB*, 414 F.2d 1345, 1347 (3d Cir.1969) (internal quotations omitted).

While the law is clear, it does not apply to the instant case. There is no evidence that the Smith as a single employee acting alone intended to initiate group activity. Smith sought only to create an illusion of a violation of his rights under the NLRA. The evidence suggests that the Smith only called PINC because he determined he would, and not as a result or because of any desire to engage in protected activity.

In *Goodyear Tire & Rubber Co.*, 269 N.L.R.B. 881, 881 (1984) an employee's refusal to perform an assignment based on his belief that the equipment was unsafe was held not be a concerted activity where none of the other employees had complained. Please also see *NLRB v. Portland Airport Limousine Co.*, 163 F.3d 662 (1st Cir. 1998), where an employee was discharged for refusing to drive his assigned tractor because of safety concerns, which he communicated to another employee who also refused to drive in the same tractor, was not engaged in concerted activity because he was motivated by personal safety concerns.

Should the Board find Smith engaged in protected concerted activity, it has imposed limits on what activity enjoys the protection of the Act. Outlandish conduct,

including false statements or extreme accusations or disloyalty, may remove otherwise protected activity from coverage of the Act.

In *St. Luke's Episcopal-Presbyterian Hospital, Inc. V. NLRB,* the Eighth Circuit reversed the Board and found that an employee's statements were materially false and therefore not protected. On Appeal of *Carleton College, 328 NLRB 31, 1999 WL 298524 (1999),* the Eighth Circuit held that "misconduct that is flagrant or render(s) the employee unfit for employment is unprotected," and factors to be considered in this regard include "the nature of the misconduct, the nature of the workplace, and the effect of the misconduct on the employers authority.

Smith was acting in a manner that Shamrock never authorized. Smith had no intention to act appropriately when confronted and requested to end his habits (Exhibit 10). To punish, or to find an Employer has violated any Section of the Act, when it acted only to protect its employees, its customers, and its business would be a clear indication that an employee can threaten, misstate facts, and blatantly fabricate allegations, and *still* be fully protected by the Act. This clearly has been rejected by the Board. Smith's actions are just the type of actions expressly excluded from the protection of the Act in the case law cited.

C. Notice and Opportunity to Bargain about its decision to suspend and terminate Mr. Smith

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of [its] employees . . . ." In *NLRB v. Katz, 369 U.S. 736 (1962),* the Supreme Court approved the Board's determination that an employer violates Section 8(a)(5) by making unilateral changes to the terms and

conditions of employment of employees represented by a union. Katz held that such a change "is a circumvention of the duty to negotiate which frustrates the objectives of § 8(a)(5) much as does a flat refusal" to bargain. Id. at 743 (footnote omitted).6

The imposition of discipline on individual employees alters their terms or conditions of employment and implicates the duty to bargain if it is not controlled by preexisting, nondiscretionary employer policies or practices. That conclusion flows easily from the terms of the Act and established precedent. When an employee is terminated—whether for lack of work, misconduct, or other reasons—the termination is unquestionably a change in the employee's terms of employment.

As the Board has held:

Under Sections 8(a)(5) and 8(d), it is unlawful for an employer to refuse to bargain with respect to mandatory subjects of bargaining. *Fibreboard Paper Products v. NLRB, 379 U.S. 203, 209–210 (1964).* Termination of employment constitutes such a mandatory subject. N.K. Parker Transport, Inc., 332 NLRB 547, 551 (2000); see NLRB v. Advertisers Mfg. Co., 823 F.2d 1086, 1090 (7th Cir. 1987) ("Laying off workers works a dramatic change in their working conditions" and thus "[l]ayoffs are not a management prerogative [but] a mandatory subject of collective bargaining"). See also *Harris v. Quinn, 134 S.Ct. 2618, 2636 (2014)* ("Under federal law, mandatory subjects include . . . termination of employment . . .") (citing N.K. Parker Transport, supra).

Similarly, when an employee is demoted or suspended ***without pay*** (emphasis mine), the action represents a change in terms and conditions of employment. See, e.g., *Pillsbury Chemical Co., 317 NLRB 261, 261 fn. 2 (1995)* (holding that employee's

demotion and substantial wage reduction "rendered [employee's working] conditions so difficult or unpleasant" that constructive discharge was demonstrated)..

Not every unilateral change that affects terms and conditions of employment triggers the duty to bargain. Rather, the Board asks "whether the changes had a material, substantial, and significant impact on the employees' terms and conditions of employment." *Toledo Blade Co., 343 NLRB 385, 387 (2004).*

In exigent circumstances the Employer may act prior to bargaining provided that, immediately afterward, it provides the union with notice and an opportunity to bargain about the disciplinary decision and its effects. Finally, if the Employer has properly implemented its disciplinary decision without first reaching agreement or impasse, the Employer must bargain with the union to agreement or impasse after imposing discipline.

As stated in *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106 (Aug. 26, 2016), "The scope of such exigent circumstances is best defined going forward, case by case, but it would surely encompass situations where (for example) the employer reasonably and in good faith believes that an employee has engaged in unlawful conduct that poses a significant risk of exposing the employer to legal liability for the employee's conduct, or threatens safety, health, or security in or outside the workplace." *Total Security* continues by saying "Thus, our holding today does not prevent an employer from quickly removing an employee from the workplace, limiting the employee's access to coworkers (consistent with the employer's legal obligations) or equipment, or taking other necessary actions to address exigent circumstances when they exist. The Board has developed an analogous approach to the duty to bargain over other issues where economic

exigencies exist. See *RBE Electronics of S.D., 320 NLRB 80 (1995)*; *Bottom Line Enterprises, 302 NLRB 373 (1991)*, enfd. mem. 15 F.3d 1087 (9th Cir. 1994).

Total Security continues by saying "In the circumstances described, an employer could suspend an employee pending investigation, as many employers already do. An employer who takes such action should promptly notify the union of its action and the basis for it and bargain over the suspension after the fact, as well as bargain with the union regarding any subsequent disciplinary decisions resulting from the employer's investigation."

Smith was suspended pending investigation because his action had the direct effect of creating a purchase order, and further made clear he was above the rules through his treatment towards his supervisor Williamson. Smith's actions were outside his express authority, and his removal before he continued to call outside companies was an exigent circumstance. Shamrock had an obligation to ensure Smith would not continue to harass outside contractors and cause confusion between it and these vendors.

The Union was provided notice and the opportunity to bargain immediately, and as the emails demonstrate. Beardsley did not respond to the phone calls and emails from Holmes. Every attempt was made to contact the union before the suspension of Smith. Further, Shamrock joined the union in bargaining only three days after Smith was asked to leave the site while the investigation was under way.

Finally, Smith was paid for the days the investigation took place and was not immediately terminated. He suffered no material, substantial, and significant impact on his terms and conditions of employment prior to the parties meeting to bargain over the

same. Shamrock's actions did not result in loss of pay or employment status prior to bargaining.

D. Alleged Violation of Section 8(a)(1)

Under § **8(a)(1)** of the Act, an employer commits an unfair labor practice if it interferes with, restrains, or coerces employees in the exercise of their rights under § 7 of the Act. 29 U.S.C.S. § 158(a)(1).

In regard to this allegation, there is absolutely no proof or evidence that such actions were taken by Williamson. Williamson has never attended a negotiation between the parties, and has not received information from Shamrock in regard to **any** potential agreement Shamrock has attempted to make. Therefore, it is impossible for this allegation to have merit. The allegation states "assigning employees with work and behavioral problems to this employee's shift which would result in more onerous working conditions," and thus provides no way in which the Employer has an ability to effectively investigate such an allegation.

Shamrock has no knowledge of which employee (if any) was assigned to another employee's shift (if it ever occurred) for such a reason as claimed by the Charging Party. Shamrock also does not assign employees to the same shift based on discipline or disciplinary actions. As stated above, The Board "is permitted to draw reasonable inferences, and to choose between fairly conflicting views of the evidence[,] [i]t cannot rely on suspicion, surmise, implications, or plainly incredible evidence." *Concepts & Designs, Inc. v. NLRB*, 101 F.3d 1243, 1245 (8th Cir.1996). If Williamson did not know

about the Unions position on Progressive Discipline at the table, it is impossible for him to have taken such actions because of it.

Unfortunately, Shamrock believes this is a further attempt to harass the company and cause harm to both the Employer and the site supervisor in retaliation for Smiths suspension, investigation, and termination of employment.

APPROPRIATENESS OF 10(j) INJUNCTIVE RELIEF

While not specifically requested, Shamrock believes it would be beneficial to address the appropriateness of 10(j) injunctive relief.

Section 10(j) of the National Labor Relations Act authorizes a district court to enter "just and proper" injunctive relief pending the final disposition of an unfair labor practices claim by the National Labor Relations Board. *Bloedorn v. Francisco Foods, Inc., 276 F.3d 270, 286 (7thCir. 2001)*(citing 29 U.S.C. § 160(j)); see also *Lineback v. Spurlino Materials, LLC, 546 F.3d491, 499 (7th Cir. 2008).*

Like many other forms of preliminary injunctive relief, an injunction issued under the authority of Section 10(j) has been described as an "extraordinary remedy." *NLRB v. Electro-Voice, Inc., 83 F.3d 1559, 1566 (7th Cir. 1996)*(quoting *Szabo v. P*I*E* Nationwide, Inc., 878F.2d 207, 209 (7th Cir. 1989).* Relief under Section 10(j) should be granted "only in those situations in which the effective enforcement of the NLRA is threatened by the delays inherent in the NLRB dispute resolution process." Id.

While the purpose of the 10(j) injunction is to provide temporary relief between the filing of the complaint by the Board and issuance of its final decision, Shamrock asserts that in the instant unfair labor practice charge, it is neither necessary nor needed.

Before ordering temporary relief under 10(j), a fact finder must first determine that there is reasonable cause to believe an alleged unfair labor practice occurred. *Kobell For & on Behalf of NLRB v. United Paper workers Int'l Union, AFL-CIO, CLC, 965 F.2d 1401 (6th Cir. 1992).*

Regarding the termination of Smith, and the other charges and allegations brought by the Union, no credible evidence exists for the Board to believe an unfair labor practice has occurred. The charging party cannot produce any credible evidence that Shamrock terminated Smith for "union activity" and to the contrary, as the exhibits attached here clearly demonstrate, all action taken in regard to Smith followed company protocol and standards and stemmed directly from his inappropriate actions while employed.

The evidence demonstrates that the termination of Smith, as well as all communication between co-workers, comports with the established policies and practices of Shamrock without any relation to alleged protected activity. The charging party cannot establish that Shamrock took any employment action against Smith because of any type of protected activity. In light of the lack of a prima facie case concerning Smith's termination, it is unlikely the Charging Party will prevail on the merits.

Based on the foregoing reasons, the Board should not seek 10(j) injunctive relief in the above captioned case.

SUMMARY

Shamrock did not take the adverse employment actions alleged in the charges in retaliation for any activity protected under the Act. Smith was terminated for cause and valid business reasons.

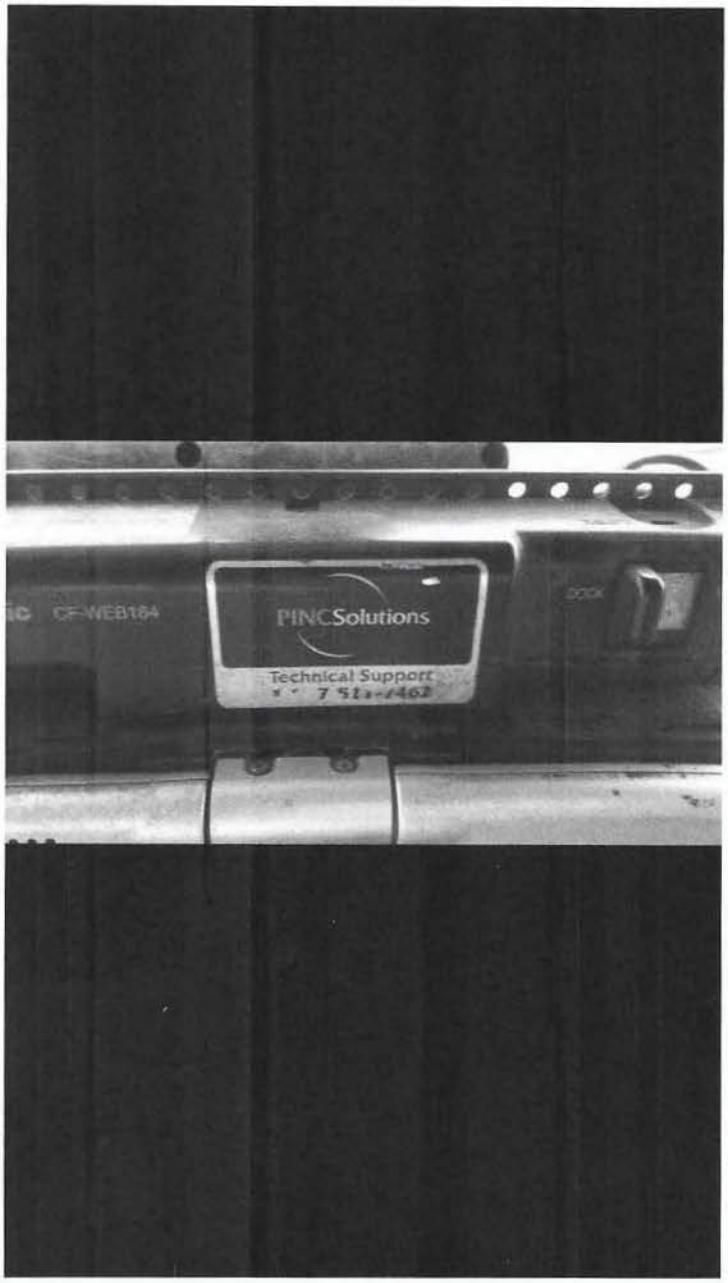
Shamrock respectfully requests the Board find no merit in the allegations contained in the instant charges. Shamrock requests that the Board dismisses the charges for lack of credible evidence demonstrating a violation of the Act.

Dated: May 22, 2018

Respectfully submitted,

/s/ James Allen

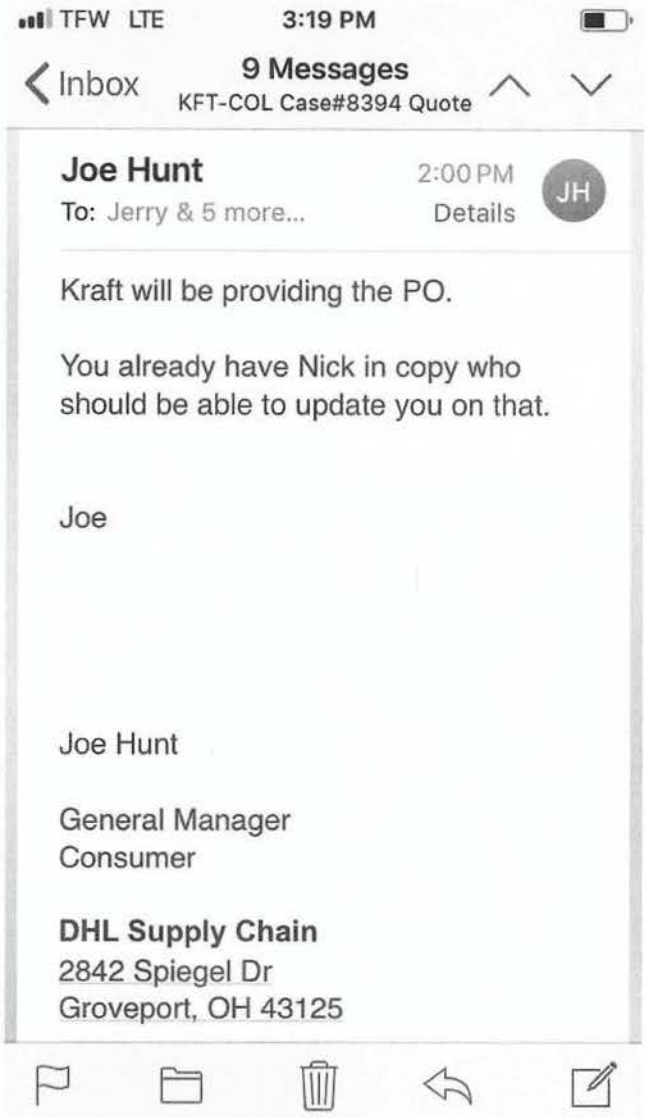
James Allen
Burdzinski & Partners Incorporated
A Federal Labor Practice
2393 Hickory Bark Drive
Dayton, Ohio, 45458
JAllen@Burdzinski.Com

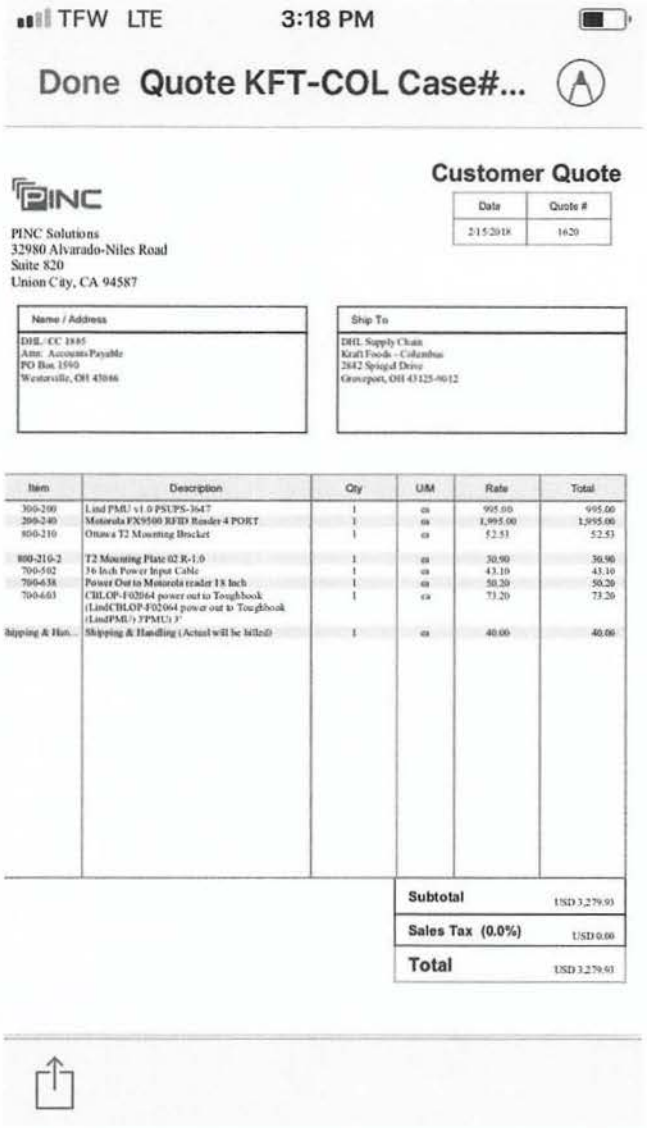


EMPLOYER'S EXHIBIT
1

EMPLOYER'S EXHIBIT
2

EMPLOYER'S EXHIBIT
3


TFW LTE
3:19 PM
Inbox
9 Messages
KFT-COL Case#8394 Quote
Joe Hunt
2:00 PM
To: Jerry & 5 more...
Details
JH
Kraft will be providing the PO.
You already have Nick in copy who should be able to update you on that.
Joe
Joe Hunt
General Manager
Consumer
DHL Supply Chain
2842 Spiegel Dr
Groveport, OH 43125



TFW LTE 3:18 PM

Done Quote KFT-COL Case#...

PINC

PINC Solutions
32980 Alvarado-Niles Road
Suite 820
Union City, CA 94587

Customer Quote

Date	Quote #
2/15/2018	1620

Name / Address	Ship To
DHL / CC 1885 Attn: Accounts Payable PO Box 1960 Westerville, OH 43086	DHL Supply Chain Kraft Foods - Columbus 2842 Spiegel Drive Groveport, OH 43125-9012

Item	Description	Qty	U/M	Rate	Total
300-200	Lind PMU v1.0 PSUPS-3647	1	ea	995.00	995.00
200-240	Motorola FX9500 RFID Reader 4 PORT	1	ea	1,995.00	1,995.00
800-210	Ottawa T2 Mounting Bracket	1	ea	52.53	52.53
800-216-2	T2 Mounting Plate 02 R-1.0	1	ea	30.90	30.90
700-502	36 Inch Power Input Cable	1	ea	43.10	43.10
700-638	Power Out to Motorola reader 18 Inch	1	ea	50.20	50.20
700-603	CBLOP-F02064 power out to Toughbook (Lind(CBLOP-F02064 power out to Toughbook (Lind(PMU) 3'PMU) 3'	1	ea	73.20	73.20
Shipping & Han...	Shipping & Handling (Actual will be billed)	1	ea	40.00	40.00

Subtotal	USD 3,279.93
Sales Tax (0.0%)	USD 0.00
Total	USD 3,279.93

EMPLOYER'S EXHIBIT
4

EMPLOYER'S EXHIBIT

5

SHAMROCK CARTAGE INC. INCIDENT REPORT

EMPLOYEE NAME: Shane Smith

DATE: 4/9/2018

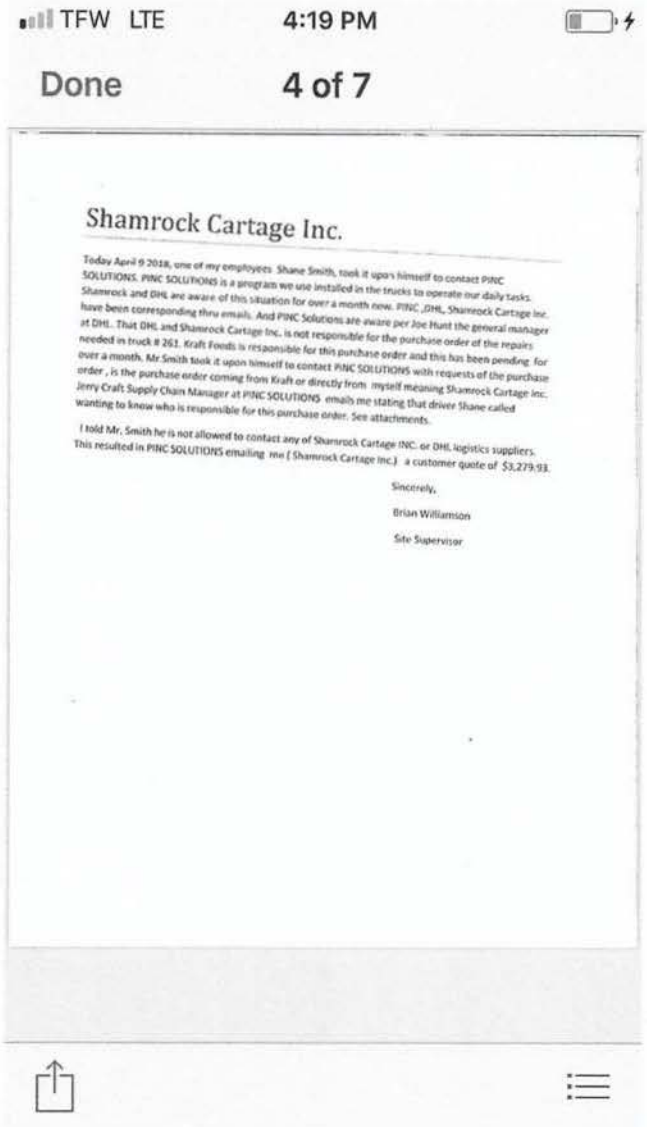
CALL OFF:

INCIDENT: Suspension

DESCRIPTION: After I told Mr. Smith he is suspended & pending termination. And I need him to grab his belongings And leave the property. He stated "You ratted me out, I'll be back with pay, and when I get back your done"

Note: This just adds to more intimidation From Mr. Smith. Less than a month ago, He intimidated New Hire Galen Hammond on purchasing a smart phone or else.

SUPERVISOR SIGNATURE: L. Hill



EMPLOYER'S EXHIBIT
6

Gmail by Google

Michael Holmes <mholmes@burdzinski.com>

Shane Smith

Michael Holmes <mholmes@burdzinski.com>
To: ted.beardsley@teamsters413.com
Cc: Jim Allen <jallen@burdzinski.com>

Wed, Mar 21, 2018 at 1:44 PM

Good afternoon,

I hope your trip to Detroit went well.

Unfortunately, I have been contacted by the Employer in regard to Shane. Evidently, a week or so ago Shane told another employee that this employee was taking to long to do his job, and thus would not be getting a lunch that day.

While this employee ignored Shane, this is a problem.

I have further found out that an employee quit today as well.

After an employee meeting, Shane told a new employee that he is the Union Steward and that the new employee is required to buy a smartphone. He continued by saying that if he did not, this employee would not be driving in certain trucks and would have his daily duties dictated to him.

This employee (on his first day) brought up Shane's demand to the new Supervisor, and was told that Shane was incorrect (he is not required to own a smartphone). The employee then quit.

He worked for a total of two and a half hours.

You and I both know that Shane has no authority to dictate when or if someone else gets to eat lunch. We also both know that Shane does not determine that an employee should get a smartphone on his own dime (or at all), or which trucks to utilize. This is unless Shane is now claiming to be a supervisor.

While I know that there will always be some banter at any workplace, when Shane (or any employee) directs that someone will not take a lunch break or takes actions that result in an employee quitting the job, I believe you should be made aware.

This is not something that the other employees should need to deal with, and I wanted to bring it to your attention immediately.

Thank you for your time, and drive safely.

--
Respectfully,

Michael

Michael B. Holmes
mholmes@Burdzinski.Com

Burdzinski & Partners Incorporated
A Federal Labor Practice
www.Burdzinski.Com

2393 Hickory Bark Drive
Dayton, Ohio, 45458
United States Of America [USA]

616-901-2662 Dayton, Ohio
415-815-9830 San Francisco, California
937-885-3705 Dayton Ohio main office
866-645-7304 electronic fax

EMPLOYER'S EXHIBIT
7

GROVEPORT PD

CFS: 17-001970 LOCATION: 2842 SPIEGEL DR, GROVEPORT OH

SIGNAL CODE: 72 CALL DATE/TIME: 10/19/2017 00:00

PEOPLE

	NAME / ALIAS / DOB / AGE / SEX / RACE / HGT / WGT / HAIR / EYES / BUILD / COMP / MARKS/SCARS	SSN / OLN / STATE / TYPE / CLOTHNG / EMPLOYER/SCHOOL / PARENT/LOCAL REFERENCE	ADDRESS / POB / PHONE / PERSON TYPE
1.	CLARKSON, LISA		151 E CLARK LANCASTER, OH 43130
2.			
3.			
4.			

VEHICLE

	YEAR	MAKE	MODEL	STYLE	COLOR	PLATE STATE	VIN
1.							
2.							

ACTIVITY

REPORTING PARTY (CLARKSON) STATES THAT ON 8/8/17 AT ABOUT 1200 ANOTHER EMPLOYEE OF KRAFT, SHANE SMITH, DID CLIMB ONTO HER SEMI POWER UNIT AND BEGIN TO YELL AND SCREAM AT HER BECAUSE HE HAD RECENTLY BEEN FIRED. HE STATED TO HER THAT WHEN HE GOT HIS JOB BACK HE WAS GOING TO PULL HER OUT OF HER TRUCK. CLARKSON STATES THAT SMITH DID NOT LIKE HER THROUGHOUT HIS EMPLOYMENT WITH THE COMPANY.

REPORT IS FOR DOCUMENTATION ONLY.

EMPLOYER'S EXHIBIT
8

REPORTING OFFICER SGT. JOSH SHORT BADGE NUMBER S2

Gmail by Google

Michael Holmes <mholmes@burdzinski.com>

Shane Smith

Michael Holmes <mholmes@burdzinski.com>
To: ted.beardsley@teamsters413.com
Cc: Jim Allen <jallen@burdzinski.com>

Mon, Apr 9, 2018 at 5:06 PM

As my voice mail stated, Shane Smith is suspended pending termination.

Please contact me to bargain about this.

Thank you for your time.

--
Respectfully,

Michael

Michael B. Holmes
mholmes@Burdzinski.Com

Burdzinski & Partners Incorporated
A Federal Labor Practice
www.Burdzinski.Com

2393 Hickory Bark Drive
Dayton, Ohio, 45458
United States Of America [USA]

616-901-2662 Dayton, Ohio
415-815-9830 San Francisco, California
937-885-3705 Dayton Ohio main office
866-645-7304 electronic fax

EMPLOYER'S EXHIBIT
9

Gmail

Michael Holmes <mholmes@burdzinski.com>

Shane Smith

Theodore Beardsley <t.beardsley89@gmail.com>
To: Michael Holmes <mholmes@burdzinski.com>

Tue, Apr 10, 2018 at 5:36 PM

I will see you in the morning for the labor Board reading and then we can proceed to union hall for Shane's situation. If you have any additional questions feel free to call.

Sent from my iPhone
[Quoted text hidden]

BURDZINSKI & PARTNERS INCORPORATED

A FEDERAL LABOR PRACTICE

LABOR RELATIONS SPECIALISTS, NON-LAWYERS, AGENTS & ADVOCATES FOR EMPLOYERS

Detroit, Michigan
Huntington, West Virginia
Charleston, South Carolina

2393 HICKORY BARK DRIVE
DAYTON, OHIO, 45458
TELECOPIER (866) 645-7304
TELEPHONE (937) 885-3705

Destin, Florida
Saint Louis, Missouri
San Diego, California

WWW.BURDZINSKI.COM

[SEND ALL WRITTEN REPLY CORRESPONDENCE TO DAYTON, OHIO]
WRITER'S ELECTRONIC ADDRESS [EMAIL] BBURDZINSKI@BURDZINSKI.COM
WRITER'S DIRECT DIAL TELEPHONE NUMBER 616-901-2662

PERSONAL, CONFIDENTIAL AND PRIVLEDGED MEMORANDUM:

DATE: April 11, 2018

FROM: Michael Holmes

REGARDING: Shane Smith Discipline Bargaining

¶ The following notes were taken in a short hand fashion, in an attempt to record the most significant events that took place during the course of the negotiation meeting but do not necessarily represent the opinions of the author of this memorandum, nor of the firm of Burdzinski & Partners Incorporated.

¶ The meeting was not electronically recorded, nor was a transcript made, during the course of the contract negotiation meeting, however notes were taken by the author of this memorandum and by other members of the employer's bargaining committee.

¶ The employer was represented by: the author of this memorandum:

Michael Holmes
Burdzinski & Partners Incorporated,
2393 Hickory Bark Drive, Dayton, Ohio, 45458,
mholmes@Burdzinski.Com
937-885-3705 telephone,
937-885-3701 telecopier and
616-901-2662 wireless];

EMPLOYER'S EXHIBIT
10

¶ The union was represented by:

Mr. Ted Beardsley and David Payne

To start at 3:00 pm in Columbus at the teamster hall

Jim Allen is on the phone and Michael Holmes is physically at the meeting.

It is 2:58 and Shane Smith is also in attendance

--Begin--

Jim: Shane held himself out at an agent of the company. He called to PINC and attempted to process a $3,200 purchase order. You can't do that, that is major and that is a big deal. When we started this process, and we wanted to investigate, Shane turned around and threatened the Brian.

I get it that Shane is the steward and in the union and that is why we are talking about this and negotiating it, and our intention is to fire him.

Shane: On Monday, between 12 and 1, I approached our new manager brian and asked if he was aware with issues with truck 236. Brian said "you can deal with that"/ "can do that", and gave me permission. When I was off the clock on lunch, I called up the number, and talked to a guy named Dave. A thought opened up, and I asked about new knowledge, and was told that he can't tell him what is going on and he talked to a guy named Jeremy, and then Jeremy came over to pop up on the computer, and he said it's been a three month thing going , eventually he was told that neither of us is liable for the debt, and then I asked "has anyone from both ends, or joe inside thought to send an email asking shamrock, or anything updated, and when asked how to answer it, he asked if he wanted it to be a driver inquiry, and he had to get to work and then he hung up.

That was 1:30 to 2:30, and then 5:00 or 5:30 I got called by brian, and he said corporate and him said "you are suspended," and then I asked him and then left, and I did not threaten Brian and I know what this is about and I will be back to work with or without back pay.

Then I gathered up my stuff and left, and I called Dave at PINC back and then called Jerry over with the supply chain guy Jeremy and then he said when asked if he was inquiring, per drivers curiosity, per drivers curiosity and asking about that – is that the email he sent, well that's what did it.

After I told him what happened, Jerry got quiet, and I asked him when I got off there, it was not premediated, nothing was malicious about it, and I wanted to do a good deed. That's exactly what happened,

Ted: Why didn't Bryan do it, and he gave you permission and walked you through about it.

Shane: Everything he said was what I know and was in that email

Jim: Why would Bryan lie about it, what's his motivation?

Shane: Right before Brian (ted interrupted)

Ted: Brian is afraid.

Jim: ...what did you say Shane?

Shane: I mentioned that if this had permission to call about the it thing

Jim: why would you say about permission, why would say anything about permission

Shane: I wanted to know why I was being suspended, I asked if we needed permission about pinks

Mike: passed over emails from PINC to the union

Mike: Did you call PINC again, knowing why you were sent off the site?

Shane: Yea I asked him again after and called Jerry again.

Ted (talking to Shane): you know as well as I do I would not do it without permission, lets face the facts, it is not that he inquired that he did this, and we all do even really know what he is talking about. As far as everything after he called pinks, I told him that Brian should be the one dealing with this.

Jim: We have been passing along this stuff to fix it.

Mike: Passed off the incident report to the union.

Dave: This is how the numbers (PO amount) came in?

Ted: They're not going to do something unless authorized to do it.

Jim: I hear that, but I do not think he had permission. We can circle back after hearing from our guys.

Ted: Shane has been very honest about this, and I do not see him lying about this now, especially because you have to be walked through to do this

Jim: I get it, and I understand, and if their story sticks, we will terminate, this is how investigatory situations work.

Ted: If he was tempted to deny or if you step back, a lot of people go into a situation...

Jim: If what you're saying is true, and if the company determines that is not the case and we wasn't to make sure we do the investigation, and when we make a final decision we will make sure we let you know, but for now nothing is going to happen before, and we need to vet this and we don't want to fight a stupid ULPC.

Ted: And if he is a new manager, he is indecisive anyways, and if you're not confident in what you, and this manager will say I got to do what I have to do, just because Brian needs a job.

Jim: We won't drag the investigation out.

Ted: And I kind of wish brain would have been accessible to this meeting, and there are some questions I would like to ask him, and I want to interview him, and let's face it, people tend to worry about themselves, verses what is best for themselves, and Shane had told me I am trying to help the company and not hurt the company, and I could not make heads or tails, and now I see it in front of me crystal clear, and it is a situation that is bad and make the manager do it even if you get permission.

Jim: We made clear that that the union has rights to be heard, and we need a proper investigation and with our new information we will get back to you, and we will not drag this out either, and we will get to this in the next 24 hours, does that work?

Ted: Fair enough.

Jim: I have nothing else.

Shane: I have nothing else.

Mike: As a final question, Shane never called in another order before this right?

Ted: You have to go through a proper step and channels to do that.

Mike: We will track all of this down.

Ended at 3:25

Gmail

Michael Holmes <mholmes@burdzinski.com>

Results of the investigation in regard to Shane Smith

Michael Holmes <mholmes@burdzinski.com>
To: ted.beardsley@teamsters413.com

Thu, Apr 12, 2018 at 4:13 PM

Ted,

After the notice we provided to bargain with the Union, bargaining over the potential discipline on April 11th, 2018, and the Employers investigation, the Employer has determined that Mr. Smith's employment shall be terminated effective immediately.

I will call your cell phone, within a minute, after this email is sent to make sure you receive the employers decision.

Thank you for your time.

--
Respectfully,

Michael

Michael B. Holmes
mholmes@Burdzinski.Com

Burdzinski & Partners Incorporated
A Federal Labor Practice
www.Burdzinski.Com

2393 Hickory Bark Drive
Dayton, Ohio, 45458
United States Of America [USA]

616-901-2662 Dayton, Ohio
415-815-9830 San Francisco, California
937-885-3705 Dayton Ohio main office
866-645-7304 electronic fax

EMPLOYER'S EXHIBIT
11

Gmail by Google

Michael Holmes <mholmes@burdzinski.com>

Results of the investigation in regard to Shane Smith

Michael Holmes <mholmes@burdzinski.com>
To: ted.beardsley@teamsters413.com

Thu, Apr 12, 2018 at 4:15 PM

Hello,

I have called you in regard to this matter. Unfortunately, the mailbox for your phone is full, and I cannot leave a message.

Thank you for your time.
[Quoted text hidden]

EMPLOYER'S EXHIBIT
12